

REMARKS

Claim 55 has been cancelled without prejudice.

Claim 49 has been amended to specify a method of reconstructing a joint using a reconstructive structure comprising “about 4 to about 200 layers of submucosa tissue.” Support for the added terminology can be found in the Figures, particularly Figs. 4, 5, and 11-13 (which show constructs of 4, 5, 6, 8, and 10 layers) and on page 12, lines 6-8 of the captioned application. Each of the earlier applications related to the captioned application, including U.S. Application Serial No. 08/628,773 (hereinafter the ‘773 application), filed April 5, 1996, has the same support for the added terminology (see Figs. 4, 5, and 11-13 and page 9, lines 26-28 of the ‘773 application).

Applicants acknowledge that this amendment is being made after final rejection and that entry of amendments after final is at the Examiner’s discretion. This amendment was not presented earlier because it was believed that it was not necessary to complete response to the last Official Action. Further the amendment is responsive to the Examiner’s comments in the present Official Action, it puts the claims in condition for allowance or in better form for appeal, and it does not raise any new issues or require further search. Applicants respectfully request that the Examiner exercise his discretion in favor of entry of this amendment under these circumstances.

The Examiner has rejected claims 49-54 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,782,915 (hereinafter the ‘915 patent) in view of U.S. Patent No. 5,968,096 (hereinafter the ‘096 patent). The Examiner contends that the ‘096 patent discloses removing the entire joint down to the cancellous bleeding bone, but fails to disclose the submucosa graft of 1 to 12 mm thick as claimed, and that the ‘915 patent teaches an 8-layer submucosa graft for use in tissue repair. Applicants respectfully traverse the Examiner’s rejection of claims 49-54, particularly for the reason that the claims as amended clearly have the benefit of the April 5, 1996 filing date of the grandparent ‘773 application;

the cited '915 patent having that same filing date (April 5, 1996) is not prior art against the present claims as amended.

The captioned application is a division of U.S. Patent Application Serial No. 08/913,771, filed on December 17, 1997, which is a continuation-in-part of U.S. Patent Application Serial No. 08/628,773 (the '773 application), filed on April 5, 1996. Support for the amendment to claim 49 to specify a method of reconstructing a joint using a graft construct comprising "about 4 to about 200 layers of submucosa tissue" is found in the early '773 application (*i.e.*, the grandparent application). Figs. 4, 5, and 11-13 of the '773 application actually depict graft constructs with 4, 5, 10, 8, and 6 layers, respectively. Furthermore, on page 9, lines 26-28 of the specification of the '773 application it is stated that "[t]he number of layers may vary between 50, *for example*, to about 200 layers." The collective teachings of the application based on both the graft constructs illustrated in the drawings and those exemplified in the text of the specification make it clear that the range of layers in the graft constructs can be as few as 4 layers (see Fig. 4) to about 200 layers. This description is not only in the captioned application but it is in each of the earlier applications related to the captioned application, including the grandparent '773 application, filed on April 5, 1996. Therefore, amended claim 49 specifying a method for reconstructing a joint using a graft construct comprising "about 4 to about 200 layers" of submucosa tissue, is entitled to an effective filing date of April 5, 1996 (*i.e.*, the filing date of the '773 application).

The application that issued as the cited '915 patent was filed on April 5, 1996, the same date as that to which amended claim 49 is entitled. Accordingly, the cited '915 patent is not prior art to the captioned application. Withdrawal of the rejection of claim 49, and its dependent claims 50-54, under 35 U.S.C. § 103(a) over the '915 patent in view of the '096 patent is respectfully requested.

The Examiner has also rejected claims 49-53 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,881,773 (hereinafter the '773 patent) in view of

U.S. Patent No. 5,281,422. As discussed above, the captioned application claims priority to the '773 application, filed on April 5, 1996, and the amended claims are entitled to that early effective date. The filing date of the application that issued as the cited '773 patent was September 13, 1996, after the effective date of the amended claims. Thus, the '773 patent is not properly cited as prior art against the amended claims of the captioned application. Withdrawal of the rejection of claim 49, and its dependent claims 50-53, under 35 U.S.C. § 103(a) is respectfully requested.

CONCLUSION

The foregoing remarks are believed to fully respond to the Examiner's rejection. The claims are in condition for allowance. Applicants respectfully request allowance of the claims, and passage of the application to issuance.

Respectfully submitted,



Rebecca L. Ball
Registration No. 46,535
Attorney for Applicants

RVB:glt
(317) 231-7511
Indianapolis, Indiana 46204